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# THE CORPORATION JOURNAL

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VOL. VII, No. 146

MAY, 1926

PAGES 169-192

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*Published by*

THE CORPORATION TRUST COMPANY AND AFFILIATED COMPANIES

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*The policy of The Corporation Trust Company in all matters relating to the incorporation, qualification, statutory representation, and maintenance of corporations, is to deal exclusively with members of the bar.*

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**Amendment to New York Tax Law Imposing Income Tax on Banks.** By Chapter 286, Laws of 1926, Articles 9-B and 9-C are added to the New York Tax Law, imposing a tax on banks, both national and state, on trust companies and other financial institutions, based on their respective net incomes. This new tax applies to the entire net income of the calendar year 1926 and it is therefore important that those affected immediately familiarize themselves with the law and all matters in connection therewith. For full particulars attention is directed to The Corporation Trust Company's New York Tax Service.

**Completed Return for Federal Income Tax.** The attention of those who have filed tentative returns for Federal income tax is directed to the fact that May 15, 1926, is the last day for filing the completed return.

  
President

## Stock Transfers

**C**OSTLY delays and annoying difficulties in procuring the transfer of a stock certificate—through lack of required waivers or other documents, through incorrect endorsement, improper inscription, etc.,—may be avoided if The Stock Transfer Guide and Service is consulted before forwarding the certificate to the corporation or transfer agent.

The Stock Transfer Guide and Service, official organ of the New York Stock Transfer Association, is used by practically all leading transfer agents as a check on what should be required before your transfer is made. When you consult the same Service before forwarding the certificate it enables you to take in advance exactly the measures which the transfer agent, when he receives your request, will look to see taken. Write today for particulars.

### **THE CORPORATION TRUST COMPANY**

120 Broadway, New York

*Affiliated with*

### **The Corporation Trust Company System**

15 Exchange Place, Jersey City

Organized 1892

Chicago, 112 W. Adams Street  
Pittsburgh, Oliver Bldg.  
Washington, Colorado Bldg.  
Los Angeles, Security Bldg.  
Cleveland, Guardian Bldg.  
Kansas City, Scarritt Bldg.  
Portland, Me., 281 St. John St.

Philadelphia, Land Title Bldg.  
Boston, 53 State Street  
(Corporation Registration Co.)  
St. Louis, Fed. Com. Trust Bldg.  
Detroit, Dime Sav. Bank Bldg.  
Minneapolis, Security Bldg.  
Albany Agency, 25 Washington Ave.  
Buffalo Agency, Ellicott Sq. Bldg.

**WILMINGTON, DELAWARE**  
(The Corporation Trust Co. of America)

# THE CORPORATION JOURNAL

*Edited by John H. Sears of the New York Bar*

VOL. VII, No. 146

MAY, 1926

PAGES 169-192

The Corporation Journal is published by The Corporation Trust Company monthly, except in July, August and September. It will be mailed regularly, postpaid and without charge, to lawyers, accountants, corporation officials, and others interested in corporation matters, upon written request to any of the company's offices.

When it is desired to preserve the Journal in a permanent file, a special ring binder will be furnished at cost (\$2) and thereafter each copy will be punched to fit the binder.

The Corporation Trust Company, publisher of the Journal, was founded in 1892 to gather and compile for lawyers official information in regard to the laws, regulations, court decisions and local practice in various states relating to the organization, qualification, taxation and maintenance of business corporations; and to assist attorneys in the details of organization or qualification in any state.

For the conduct of this branch of its business the company now has offices and representatives in every state and territory of the United States and in every province of Canada. It furnishes complete and up to the minute information, precedents and assistance in drafting all required papers for incorporation or qualification in any state, territory or province, and under the attorney's direction performs all necessary steps, and furnishes the statutory office or agent required. This service is rendered to members of the bar only.

Because of the unique organization thus built up, especially trained and experienced in the gathering and furnishing of exact official information, it naturally fell to the lot of The Corporation Trust Company to originate and furnish, as they became needed, The Federal Tax, Federal Reserve Act, Federal Trade Commission, Supreme Court, and New York Tax Services; The Corporation Tax Service, State and Local; The Stock Transfer Guide and Service (covering all requirements under the various state Inheritance Tax and Federal Estate Tax Laws, the various state probate laws, and the Uniform Requirements of the New York Stock Transfer Association, relating to the transfer of corporation securities); The Congressional Service (covering proposed legislation in Congress); and special services to lawyers and their clients having business to take up with committees, commissions, boards or officials at Washington.

Incorporated under the banking law of the State of New York, and its affiliated company incorporated under the trust company law of the State of New Jersey, the company is also qualified to act for corporations as Transfer Agent or Registrar of their securities, or as Trustee, Custodian of Securities, Escrow Depositary, or Depositary for Reorganization Committees. As an adjunct to these services it also assists counsel in procuring the listing of securities on the New York Stock Exchange.

Details of any of these services will gladly be furnished at any of the company's offices.

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WILMINGTON, DELAWARE  
(The Corporation Trust Co. of America)

Having offices and representatives in every state and territory of the United States and every province of Canada and a large, trained organization at Washington, this company —

Being incorporated under the Banking Law of New York, and its affiliated company incorporated under the Trust Company Law of New Jersey, the combined assets always approximating a million dollars, this company —

—furnishes attorneys with complete, up to date information and precedents for drafting all papers for incorporation or qualification in any jurisdiction;

—files for attorneys all papers, holds incorporators' meetings, and performs all other steps necessary for incorporation or qualification in any jurisdiction;

—furnishes, under attorney's direction, the statutory office or agent required for either domestic or foreign corporation in any jurisdiction;

—keeps counsel informed of all state taxes to be paid and reports to be filed by his client corporation in the state of incorporation and any states in which it may qualify as a foreign corporation;

—acts as Transfer or Co-Transfer Agent or Registrar for the securities of corporations;

—acts as Trustee, Custodian of Securities, Escrow Depositary, or Depositary for Reorganization Committees;

—naturally (as a result of the great organization and facilities thus maintained) and necessarily (because of the important functions it performs for lawyers) keeps constantly informed of the official matters—legislation, court decisions, and the rulings and regulations of various governmental bodies—which relate to taxation, transfers of securities, regulation of business activities, etc., and furnishes such information, where desired, on an annual basis in the form of the following Services:—

The Federal Tax Service  
Corporation Tax Service, State and Local  
New York Tax Service  
Congressional Legislative Service  
Federal Reserve Act Service  
Supreme Court Service  
Federal Trade Commission Service  
Stock Transfer Guide and Service

## Warning Stockholders to Keep Their Stock Certificates in a Safe Place

Corporations having a wide distribution of stock, especially among small investors, are finding it advisable to impress them with the fact that their stock certificates should be carefully preserved. The issuance of duplicate certificates is attended, not only by difficulty and expense on the part of the investor, but is an added burden to the transfer department of the corporation due to the fact that a stop having once been put on a stock certificate remains in force, unless the certificate is found, practically forever, and consequently the stop transfer list continually increases. The experience of the American Telephone and Telegraph Company with its very wide distribution of stock indicates the importance of this matter. We are pleased to furnish the forms of statements which they attach to their stock certificates. These forms are given below. The first form is a notice attached to stock certificates issued to stockholders other than employees. The second form is a notice attached to certificates issued to employees under the Employees' Stock Plan of the company.

### American Telephone and Telegraph Company

195 Broadway, New York City  
125 Milk Street, Boston, Mass.

#### To Stockholders:

Your stock certificate is a valuable paper. It is evidence of your ownership of stock. It is important to put it away promptly and keep it in a secure place so that it will

not be lost, stolen or destroyed. If lost, stolen or destroyed it may be possible for you to secure a new certificate, but the necessary requirements to do so will involve delay and cause you considerable trouble and some expense.

A safe deposit box is the best place to keep this certificate.

H. BLAIR-SMITH,  
*Treasurer.*

### American Telephone and Telegraph Company

195 Broadway, New York, N. Y.

The attached certificate has been issued to you under the terms of the Employees' Stock Plan of the American Telephone and Telegraph Company dated May 1, 1921.

It represents shares owned by you in the business in which you are engaged. Your investment is one, practically speaking, in the telephone industry of the nation. It is the result of your systematic saving.

Your stock certificate is a valuable paper. It is important to put it away promptly and keep it in a secure place so that it will not be lost, stolen or destroyed. If lost, stolen or destroyed, it may be possible for you to secure a new certificate, but the necessary requirements to do so will involve delay and cause you considerable trouble and expense.

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## Domestic Corporations

### Delaware.

**No par value stock. Purchase of additional shares with annual dividend at less than market value.** Certain stockholders of the General Gas & Electric Corporation, brought this bill for injunction seeking particularly to enjoin the corporation from carrying out its notified intention of allowing the holders of the class "A" common stock to receive additional shares of class "A" common at the rate of \$25 per share to the extent of their dividends; and generally to enjoin the company from issuing to the holders of its common stock, class "A," additional shares of such stock at less than the fair value thereof, unless there shall have been paid, or set apart for payment, to the holders of common stock, class "B," during any calendar year, dividends at the rate of \$1.50 per share per annum, and unless such additional shares are issued to the holders of the common stock, class "B," upon the same terms as they are issued to the holders of common stock, class "A." It was shown that the market value of the class "A" common stock was considerably in excess of \$25 per share, and it was contended that the practice complained of constituted an offer of no par value stock below its fair sales price. The Court of Chancery of Delaware in denying the injunction found that in selling the shares to the public a price of \$45 per share was obtained by the corporation; that this price was obtained and the shares more easily sold by reason of the announced policy of the company to allow the purchasers to buy more shares at the price of \$25 per share, to the extent of their dividends. That the directors of the defendant company honestly believed that their policy of allowing class "A" common dividends to be used to purchase further stock at twenty-five dollars a share would make a highly favorable price for that stock, the stock to which they looked for additional corporate funds, and more of which the development plans would require to be marketed, is not on the present showing to be doubted. A complete absence of selfish motive and of personal profit on their part forcefully argues that their judgment was formed in absolute honesty and entire good faith. If, as a result of the policy thus grounded, the corporation is able to secure funds from stock sales greatly in excess of the amount they otherwise could hope to realize, it is manifest that an advantage has been secured for the corporation and for all its stockholders. The directors take the view as disclosed by the answer and affidavits that the announced policy has in fact yielded such advantage in an exceedingly large amount. They think that if it were not for the policy in question the block of 48,000 shares recently sold would not have been marketed at much if any above twenty-five dollars per share. The court further says that it seems that a benefit had been conferred by the policy instead of an injury by allowing the stockholders who had purchased stock at \$45 per share to buy other shares at \$25, to the extent of their

dividend, for if this policy had not been followed, the price of \$45 per share, possibly could not have been obtained on the original sale. *Bodell et al. v. General Gas & Electric Corporation*, 132 Atl. 442. *Herbert H. Ward, of Ward, Gray & Ward, of Wilmington, and Hawkins, Delafield & Longfellow, of New York City, for complainants. William S. Hilles, of Wilmington, and Pendleton, Anderson, Iselin & Riggs, of New York City, for defendant.*

#### Florida.

**Corporate name.** The Supreme Court of Florida says in a recent decision, that the selection of a corporate name is largely controlled by those who seek that form of business organization. It is chosen with a view to the business in which the corporation is presently to engage. In assuming its name, a corporation acts at its peril. Its organizers are charged with the duty of selecting a name which will not result in material deception. It is settled that such deception may be practiced by the fraudulent use of a corporate name and the good faith of its incorporators is immaterial if the name too closely resembles that of any other previously established corporation, partnership, or individual engaged in the same line of business, and material confusion or injury results therefrom. A corporate name, although derived through authority of the state, cannot be used in a manner which will result in fraud or deception. If so used, the fact that the charter was obtained from the state does not deprive a court of equity of its power to prevent fraud and protect property rights by enjoining its use. The grant of a corporate charter by the state can confer no power to perpetrate wrong. The act of sovereignty in allowing incorporation under a particular name is permissive only. It sanctions the act of incorporation under the name chosen and for the business proposed, if that name and that business be otherwise lawful, but in granting a corporate charter the sovereign adjudges neither the legality of the business nor of the name chosen. That is a matter for judicial determination by a court of competent jurisdiction. An individual will be enjoined, in proper cases, from the fraudulent or deceptive use of his own natural name. With even greater justification will an artificial person, a corporation, be enjoined from such a use of a corporate name voluntarily chosen by it. *Children's Bootery et al. v. Sutker*, 107 So. 345. *George C. Bedell and Sabel & Reinstine, all of Jacksonville, for appellants. Johnson & McIlvaine, of Jacksonville, for appellee.*

#### New Jersey.

**Removal of officer.** This proceedings is to test the title to the office of president of the Maas & Waldstein Company. The petitioner was elected by the board of directors "for the ensuing year" in pursuance of a by-law, but shortly thereafter was removed by the board, at a special meeting and a successor named. The petitioner had notice of the meeting but did not attend, and the notice did not state that his removal was to be considered. A by-law provided that "all officers and agents shall be subject to removal at any time by the affirmative vote of a majority of the whole board of directors." The Supreme Court of



New Jersey in denying the petition, makes the following comment in connection with the by-law; "This is a by-law of the corporation adopted by its stockholders, and confers a sweeping power of removal on the board of directors with the qualification that it must be done by a majority of the whole board. Obviously, it contemplates removal without cause and therefore without notice. It is a protective instrument placed in the hands of the corporate directors to be wielded at discretion, and of its existence, of course, the relator had knowledge when he took office. The president, as in most corporations, was elected by the board, and for adequate cause could be removed by that body at any time without the aid of special authority. This being true, the by-law in question would be futile in its purpose if the existence of cause of removal and notice of hearing be essential to the exercise of the powers it confers." The court further intimates that the alleged causes for the removal were wholly inadequate, but could not be considered in view of the fact that the removal was within the power of the board under the above quoted by-law. *Walker v. Maas*, 132 Atl. 322. *McCarter & English*, of Newark, for relator. *Pitney, Hardin & Skinner*, of Newark, for respondent.

**New Jersey corporation law amended.** By Chapter 318, Laws of 1926, several important changes were made in the New Jersey corporation laws. By the amendment stockholders' meetings may now be held outside of the state when so provided in the certificate or by-laws or amendments thereto. Voting trusts are also authorized. The Act was approved March 31, 1926, to take effect immediately. Pamphlet copies may be obtained at any of our offices.

### **New York.**

**Dividends may be declared in stock of another corporation, held as surplus.** On the 16th day of May, 1923, the directors of the Auto Strop Company voted to distribute as a dividend to its stockholders all of the stock of the Auto Strop Safety Razor Company held by it. The resolution was opposed and this action was brought to prevent the distribution being made. The New York Court of Appeals in upholding the declaration says that there is no doubt as to the power of the majority of the directors of the Auto Strop Company to declare, by way of dividend the stock of the razor company. This stock was simply a surplus and it is a fundamental rule relating to the management of corporations that it is within the discretion of the directors to determine when and to what extent a dividend shall be made, subject of course to the qualification that the same shall not encroach on the capital. Dividends, when declared, must be out of surplus or undivided profits. If stock of another corporation be held which constitutes a part of the surplus or undivided profits, it is legally distributable among the stockholders as a dividend precisely the same as if it were cash. *Liebman et al. v. Auto Strop Co., et al.*, 241 N. Y. 427. *Nathan L. Miller, Alfred A. Cook, Harold Nathan and H. Bartow Farr*, all of New York City, for appellants. *Frederick Collin, Thomas L. Hughes, Robert S. Johnstone and J. Arthur Leve*, all of New York City, for respondents.



**Oklahoma.**

**Suit by minority stockholders.** The Supreme Court of Oklahoma, in a recent decision, holds that where, in an action by minority stockholders in behalf of the corporation against its officers, and those in charge of said corporation who had converted its assets to their own use and benefit, and had unlawfully issued stock, and had intermingled the funds of said corporation with their own in such a way that the exact amount of money on hand belonging to said corporation could not be determined, thereby destroying the value of the stock of the corporation, a court of equity will appoint a receiver of the corporation, because otherwise the rights of the minority stockholders could not be protected. The appointment of a receiver for the corporation does not necessarily result in its dissolution. Stock in such corporation issued by its officers and directors without consideration, as a gift, is fraudulent and void, and should be cancelled by a court of equity. *Riverside Oil & Refining Co. et al. v. Lynch et al.*, 243 Pac. 967. W. R. Banker, of Muskogee, C. Guy Cutlip, of Wewoka, Moss & Owen, of Tulsa, and Stuart, Sharp & Cruce, of Oklahoma City, for plaintiffs in error. Twyford & Smith, of Oklahoma City, for plaintiff in error *Riverside Oil & Refining Co.* J. B. Dudley, of Oklahoma City, for defendants in error.

**South Dakota.**

**Stockholders' liability.** This action was brought by a creditor of the South Dakota Central Railway Company, against certain stockholders, to recover to the extent of the unpaid balance on their stock. The Supreme Court of South Dakota in answer to the contention that the stock had not been legally issued says that however potent this argument might be in a controversy between a corporation and the illegal holders of its capital stock, it has no place in a suit between the creditors of a corporation and its stockholders. One of the stockholders sought to avoid liability on the ground that he had parted with his stock for a valuable consideration and had delivered the certificate to another party. However, no part of the consideration had been paid and the stock had not been transferred on the books. In this connection the court says that section 445 Rev. C. C. provides that the stock and transfer books of a corporation "must be kept open for the inspection of any stockholder, member or creditor" and is for the benefit of the corporation, its stockholders, members and creditors; and as this action was brought by a creditor of the corporation, one of the parties for whose benefit the statute was enacted, he therefore had the right to rely upon the record as it appeared in the stock and transfer books of the corporation. The court in disposing of this point says that while the statute is for the benefit of a creditor of the corporation it is not for the benefit of a creditor of a stockholder of the corporation. *Gray Const. Co. v. Hyde et al.*, 207 N. W. 536. Bailey & Vorhees and Kirby, Kirby & Kirby, all of Sioux Falls, Cheever & Cheever and Alexander & Alexander, all of Brookings, and E. W. McLaughlin, of Hayti, for appellants. Case & Case, of Watertown, for respondent.

**Washington.**

**Option agreement for sale of corporate property cancelled when its extension injures rights of minority stockholders.** In an action by minority stockholders of a corporation it appeared that the corporation had entered into an option agreement for the sale of all its property to one, Gray. Gray organized another corporation and assigned his option to the new corporation and obtained a majority of its stock. Some of the stockholders of the old corporation exchanged their shares for stock in the new corporation which eventually owned three-fourths of the stock of the old corporation. Gray, holding a majority of the stock of the new corporation, controlled both. If the option agreement had been enforced the minority stockholders who refused to exchange their stock would have been entitled to a proportion of the payment of money due under the agreement. In order to force the minority stockholders to exchange their stock the agreement was not enforced, but was extended from year to year. The lower court, entered an order cancelling the agreement and enjoining the renewing of it, or from extending it in any manner, or from issuing any new agreement, deed or transfer. This was affirmed by the Supreme Court of Washington, the court saying that the corporation under its new control, had without good conscience, continued to extend the agreement much beyond the time limit fixed by it for the purpose of drawing the minority stockholders into a surrender of valuable property rights. *Smith et al. v. Nevada Copper Mining Milling & Power Co. et al.*, 242 Pac. 367. G. A. McElroy and F. M. Bottoroff, both of Los Angeles, Cal., and Harmon & Keyes, of Tacoma, for appellant. W. H. Pratt, of Tacoma, for respondent.

## Foreign Corporations

**Alaska.**

**Foreign corporations engaged in business activity in Alaska not protected by interstate commerce rule.** Many foreign corporations engaged in business activities in Alaska, do not qualify as foreign corporations in the Territory because they consider their business interstate commerce. Our representative in Juneau, comments on this and calls attention to the fact that the statute requiring registration in the Territory by foreign corporations engaged in business therein was originally enacted by Congress. While the Territorial Legislature has made some amendments to the original statute, this does not alter the fact that the original act was passed by Congress; and Congress having control of the Territory may provide for the registration of foreign corporations, regardless of whether the business is intrastate or interstate. It would, therefore, seem that foreign corporations are required to register in the Territory even though their business is interstate commerce, so long as they carry on business activities in Alaska. This question was before the United States District Court, District

of Alaska, in the case of Van Scuyver Co. v. Breedman, 5 Alaska 260, the Court pointing out that as the statutes of Alaska were enacted by Congress, an order solicited within the Territory and accepted at a point outside, from which the goods were shipped directly to the purchaser within the Territory, was "doing business." Since the company had not qualified in Alaska the contract could not be enforced. Counsel for foreign corporations affected should look into this matter.

### Missouri.

**Foreign corporation maintaining office in state without qualification held foreign corporation within meaning of attachment statute.** In an action against the Challenge Co. a foreign corporation involving an attachment of property, it was insisted by the company that inasmuch as it maintained an office in Kansas City with an agent in charge upon whom service could have been obtained, it was therefore a resident of the state and was not subject to attachment as a foreign corporation. The St. Louis Court of Appeals in commenting on this point and construing the foreign corporation statutes in connection therewith says that it is obvious that it is the purpose of these provisions of the statute to compel foreign corporations "doing business" in the state to submit themselves to the taxing power of the state and to the jurisdiction of its courts. If a foreign corporation, having its chief office or place of business outside the state, may establish and maintain a domicile within the state so that it may not be liable to attachment as such, it is clear that these provisions of the statute provide the way in which this may be accomplished. The company's authority to do business in the state was forfeited and revoked in 1913, for failure to comply with the provisions of the statute and it had never since complied with the statutory provisions or obtained a renewal or reinstatement of its authority to do business in the state, at the time of the trial of the plea in abatement in the justice court, but had continued to do business in the state in violation of the statute. Under these circumstances, the company may not be permitted to say that it is a resident of the state, to defeat an attachment levied on its property in the state, though it maintained an office in the state with an agent in charge upon whom service of process could be obtained. Under such circumstances, the company must be regarded as a foreign corporation within the meaning of the attachment law. *Wayne Mfg. Co. v. Challenge Co.*, 280 S. W. 448. Jos. F. Lindsay, of St. Louis, for appellant. Arthur V. Lashly, of St. Louis, for respondent.

### Nebraska.

**Ouster of foreign corporation.** In connection with the ouster of a foreign corporation from the state the Supreme Court of Nebraska says that the district court, on entering judgment of ouster against a foreign corporation for violation of the laws or fixed policy of the

## Questions Like These—

May a corporation take a corporate name, or expressions in its advertising or on its package, indicating that it manufactures the goods it sells when as a matter of fact it does not itself manufacture those goods?

To what length may a business house or an association of business houses go in attempting to fix uniform prices at which dealers are to resell their goods?

May a business house advertise on its packages, or in other ways, as the regular price of its product a price higher than the price actually and regularly asked and higher than the real value of the product?

### VOLUME 1

**The Laws.**—The Federal Trade Commission Act, the Federal Anti-Trust Act (Clayton Act) and related laws, indexed.

**Rules and Rulings.**—The Commission's rules of practice, forms, conference rulings, and statements as to policy.

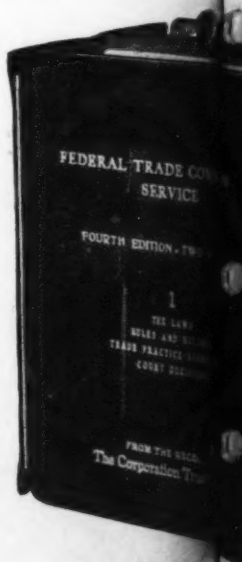
**Trade Practice Submittals.**—Reporting the conclusions of the representatives of trades and industries, agreed to in conferences with the Commission, as to unfair trade practices.

**Court Decisions.**—Reporting the full texts of all opinions in adjudications under the Federal Trade Commission Act and the Clayton Anti-Trust Act.

### VOLUME 2

**Docket of Complaints.**—Reporting every complaint issued by the Federal Trade Commission, including the date of issue, the name of the respondent complained against, a summary of the cause of complaint, the date of first hearing, and the final disposition of the complaint; indexed by names of respondents, by businesses engaged in by respondents, and by practices complained of.

**Stipulations.**—Reporting all rulings released by the Commission where the practice complained of and found to be unlawful has been discontinued by stipulation and without the formal issuance of a complaint; indexed by practices complained of.



in order to create the impression that the price at which always sold is a special bargain price?

May a manufacturer stress any certain ingredient of his product as a meritorious feature when that ingredient is not present in his product in sufficient proportions to add substantially to its value?

May a manufacturer bind the dealers to whom he sells not to deal in competing products?

May a seller of certain goods give to purchasers certain other goods on the understanding that the additional goods are a premium or prize and free of cost to the purchaser, when as a matter of fact, the cost of such additional goods is included in the selling price?

## -and the Many Other

similar questions raised or being raised in Federal Trade Commission proceedings are highly important to firms and individuals engaged in, or preparing to engage in, competitive interstate commerce. The Federal Trade Commission Service keeps you supplied throughout the year with the latest official information as to the answers being arrived at by the Commission and the courts.

state, is empowered by statute to appoint three trustees for the creditors and stockholders of such ousted corporation, to have the power and duties prescribed by the statute. In proceedings to administer the property within this state of an ousted foreign corporation and wind up its affairs within the state, the court is not authorized to order the return or refund to the individual stockholders of the surplus, if any, after paying costs and liabilities within the state against the corporation; but such surplus, if any, should be ordered returned to the proper officers or representatives of such ousted corporation. The court further says: "The decree of the district court seems to imply that stockholders may present claims for money paid for stock and have the purchase price of their stock refunded to them. In so far as this is attempted to be done, we think it is beyond the jurisdiction of the court. Doubtless, there may be stockholders who have just claims against the corporation, and there may be stockholders who, by fraudulent means, were induced to subscribe for stock of the corporation, and who may be entitled to a rescission of the contract of purchase. If such there be, we have no doubt that, when their claims are adjudicated and it is determined that they have a right to rescind their contract of purchase because of fraud, or for other valid reasons, such claims may be allowed and paid by the trustees." *State ex rel. Spillman, Atty. Gen., v. Britson Mfg. Co.*, 207 N. W. 664. *Weaver & Giller, of Omaha, and M. E. Culhane of Minneapolis, Minn., for appellant. O. S. Spillman, Atty. Gen., and T. J. McGuire, Asst. Atty. Gen., for appellee. Wm. F. Gurley, of Omaha, Frank J. Taylor, of St. Paul, Minn., and Wm. C. Fraser, Francis A. Mulfinger, Charles H. Kubat, Robert J. Webb, Wm. Ritchie, Jr., A. C. R. Swenson, all of Omaha, amici curiae.*

### New Jersey.

**Appointment of receiver for foreign corporation.** The Court of Chancery of New Jersey holds that chancery has no jurisdiction to regulate the internal affairs of a foreign corporation, but has jurisdiction to appoint a receiver of the property, in New Jersey, of an insolvent foreign corporation "doing business" in the state. The Court further says: "Foreign corporations licensed to do business in this state are subject to the provisions of our Corporation Act only so far as they are applicable. For the regulation of the internal affairs, the courts of the state of their creation must be resorted to. But, when such companies are engaged in business in this state and have their property here, an injunction may issue and a receiver be appointed, as in cases of domestic corporations, upon insolvency, actual or potential; and it is on this single ground and issue that the bill is entertained. The company never functioned in legitimate business. Its liquid assets have been dissipated. The company's factory is a liability. It has no business. It has orders, so it is claimed, for 385 cups from 79 concerns, ranging in price from 90 cents to \$6 per cup, a total of \$916.20, mostly samples, and no funds to pay for labor or material. It must buy for cash, and it has none. Its total debt is not large, only \$2,724.14, but it cannot pay. It has asked its creditors for an extension of time, with what result is not disclosed. Numerous checks, given in payment



of bills, have, time and again, been dishonored, and some are still under protest and unpaid." Baldwin et al., v. Berry Automatic Lubricator Corporation et al., 132 Atl. 308. Samuel M. Hollander and Israel B. Greene, both of Newark, for complainant. Burnett, Sorg, Murray & Duncan and N. C. Murray, all of Newark, for defendants.

#### Ohio.

**Officer and director of unqualified corporation not individually liable for debts.** The sole question presented in this case is: Is the president, manager and director of an unqualified foreign corporation "doing business" in the state, individually liable in the state for the debts of the corporation contracted and incurred by him as its agent? The Supreme Court of Ohio, in holding the officer or agent of such corporation not individually liable for the debts incurred, says that much reliance is placed in cases based upon the doctrine that a person who assumes to act as an agent for a nonexistent or legally incompetent principal renders himself personally liable to those with whom he deals, and upon the conclusion that a foreign corporation has neither qualification nor existence prior to compliance with the statute. In answer to this the court says: "Our conclusion is that as foreign corporations doing business in Ohio have always been recognized as having, by the comity of states, both qualification and existence in Ohio, and as the imposition of penalties upon the withdrawal of rights of such corporations for noncompliance with our statute are not for the purpose of withdrawing that comity, but for the purpose of more effectually securing such compliance, the doctrine of nonexistence and incompetence has no application in Ohio to foreign corporations." The American Soap Co. v. Bogue. (Not yet officially reported.) H. J. Siebenthaler, of Cincinnati, for plaintiff in error. Lawrence R. Lytle, of Cincinnati, for defendant in error.

## Taxation

#### Massachusetts.

**Income tax.** The question in this case is whether, when four affiliated corporations, which, with others not doing business in the Commonwealth, filed a consolidated return of income to the Federal Government, elect to be assessed upon their combined net income, can a tax be lawfully imposed upon one or more of them which earned income during the year although the group as a whole conducted the business at a loss? In one of the years in question certain of the corporations had received net income, but others doing business in the Commonwealth had suffered losses much greater than the combined net income of those which had earned income, so that the combined net income of the four was nothing. The Commissioner assessed each of the four corporations doing business in the commonwealth upon its net income separately. The Supreme Judicial Court of Massachusetts,

in holding the assessment by the Commissioner proper says that the answer to the above question depends upon the construction of the second paragraph of G. L. c. 63, Sec. 39. "This paragraph is to be read and interpreted as a whole. While the first sentence, if it stood alone and apart from its context, might lend color to the contention of the petitioners, it is plain from the rest of the paragraph that no such result was intended or is reasonably permissible. The clear meaning of the paragraph in its entirety is that taxation upon combined net income of foreign corporations can be levied only when such corporations doing business in this Commonwealth constitute the entire group filing a consolidated return of income to the Federal Government, and that such corporations, which have joined with one or more corporations, 'not subject to this section,' in filing a consolidated return to the Federal Government, must each file with the Commissioner a statement of its net income as there described." *A. C. Lawrence Leather Co. v. Commonwealth*, 150 N. E. 851. P. Nichols, of Boston (P. B. Smith, of Boston, of counsel) for petitioners. A. Lincoln, Asst. Atty. Gen., for the Commonwealth.

#### **New Jersey.**

**Important amendment to inheritance tax law.** An important change was made in the New Jersey Inheritance Tax Law by Chapter 294, Laws of 1926. This amendment becomes effective July 1, 1926, and eliminates the inheritance tax on stock or obligations of domestic corporations standing in the name of or belonging to nonresident decedents who die on or after that date. This provision is as follows: "Nothing in this section contained shall apply to the assignment or transfer of any stock or obligation of corporations of this state or of national banking associations located in this State standing in the name of or belonging to a nonresident decedent who dies on or after July first, one thousand nine hundred and twenty-six, or standing in the joint names of such a nonresident decedent and one or more persons, or in trust for such a nonresident decedent, and nothing in this section contained shall require notice of any such intended transfer of any such stock or obligations to be served upon the Comptroller of the Treasury of this State or shall require the consent in writing of said Comptroller thereto." The rates are also materially changed. This amendment shows a distinct upward trend in the matter of inheritance taxation as applied to nonresident decedents and with the recent decision of the Supreme Court of the United States in the case of *Rhode Island Hospital Trust Co. v. Doughton*, 46 S. Ct. 256, greatly clarifies the waiver situation in connection with nonresidents. This amendment was due in a large measure to the efforts of the New York Stock Transfer Association. Pamphlet copies may be had at any of our offices.

#### **Texas.**

**Payment of filing fees and franchise taxes.** Our representatives in Texas call attention to a recent ruling of the Attorney General of Texas

in which he holds that the Secretary of State cannot accept checks except on local banks in Austin in payment of filing fees and franchise tax and it is suggested that cashier's checks or New York exchange be used in paying such fees and taxes. In connection with the payment of fees and taxes by check attention is directed to the case of *Sherman v. Credit Finance Corp.*, 241 Pac. 722 commented on in the article on page 125, of the March (1926) number of *The Corporation Journal*. In that case the Supreme Court of Colorado says that the Secretary of State was not obliged to treat a check even though properly endorsed as payment of his fee and calls attention to the fact that the statute provides that the Secretary of State shall not file the "annual report unless all fees are paid." Therefore the Secretary of State did not have to file the report until he was paid his fee or was assured that the check was collectible. In view of the above too much care cannot be taken in the payment of fees and taxes and to keep safely within the many laws of the various states that refer to the filing of reports and payment of taxes, report and tax calendars should be kept and care should be taken to allow a sufficient time for transmission by mail and for the clearing of checks and other matters in connection therewith where payment is made in that manner. The most efficient precaution against errors in this regard is secured by those who subscribe to the Report and Tax Service maintained by The Corporation Trust Company. Detailed information in regard to this service may be secured at any of our offices.

## Federal Tax Matters

Outstanding features of a few of the many interesting rulings and decisions reported from March 20 to April 20 in *The Federal Tax Service* of The Corporation Trust Company are briefly summarized here. The complete reports should be examined to determine the extent of their application. These decisions and rulings, it must also be remembered, are not necessarily final. The citations are all to the above named Service.

An insurance agency, certain of its stockholders being inactive in the conduct of the affairs of the corporation, is held, in a court decision, not to be a personal service corporation under the Revenue Act of 1918 (Part 1, ¶3867). . . . An automobile accident on an icy pavement is not within the meaning of the term "other casualty" as employed by the statute in conjunction with the words "fires, storms, shipwreck" in its description of deductible losses (Dis-

trict Court, N. Y.) (Part 1, ¶3886). . . . Four field divisions of the Board of Tax Appeals leave Washington to hold hearings at points on the Pacific coast, in the southwest, south and middle northwest (Part 1, ¶3887). . . . Corporations with fiscal years ending in 1925 have until May 15, 1926, to file their new returns under the 1926 Act (Part 1, ¶3891). . . . Individuals, corporations, partnerships and fiduciaries having a fiscal year ending January 31, 1926, are granted an extension of

time to and including May 15, 1926, for filing complete returns (Part 1, ¶3963). . . . The article of the regulations pertaining to the exemption of local benevolent life and mutual insurance companies is amended (Part 1, ¶3894). . . . A decision by the Second Circuit Court of Appeals as to the taxability of profits arising from prohibited vocations (specifically, the sale of liquor in violation of the National Prohibition Act) brings an interesting concurring opinion by Judge Manton (Part 1, ¶3898, ¶3936). . . . The validity of a waiver executed by a taxpayer's agent is the subject of a Solicitor's Memorandum (Bull. V ('26)-13, page 5), and one executed by the president and secretary constituting a minority of the board of directors who as such were the trustees in dissolution of a Texas corporation is passed on by the Fifth Circuit Court of Appeals, which decides also that the Commissioner did not exceed his authority in prescribing the "cost, or cost or market whichever is lower" method for valuing inventories (Part 1, ¶3940). . . . The United States Supreme Court overrules the Government's contention that the New York transfer (inheritance) tax is a tax deductible by the beneficiaries only, holding it to be deductible by the estate (Part 1, ¶3951), and in another decision holds likewise as to the Texas inheritance tax, finding also that the Federal estate tax may not be accrued for the purposes of deduction by an estate which keeps its accounts on the cash basis (Part 1, ¶3959). . . . The regulations as to the inspection of returns under the order of the President, pursuant to the Revenue Act of 1926, are set forth in a Treasury Decision (Part 1, ¶3968). . . . An amendment of

interest to former employees of the Treasury Department is effected in the regulations governing the recognition of attorneys and agents before the Treasury Department (Part 1, ¶3992). . . . Payments made by a corporation to its vice-president and general manager, a stockholder, which the corporation specifically designated as "gifts" and which it treated as such for its own tax purposes, are held to have been gifts and not subject to tax as income to the recipient (Part 1, BTA Dec. 1321). . . . An amortization deduction in 1919 on buildings entirely erected in 1918 which were not used for war purposes after the end of that year is denied by the Board of Tax Appeals, five members dissenting (Part 1, BTA Dec. 1325). . . . Where treasury stock is reissued to employees dividend credits may not be deducted from income as additional compensation paid to employees, and interest charged on debit balances resulting from employees' stock subscriptions is income to the corporation (Part 1, BTA Dec. 1326). . . . A consolidated return is permitted two corporations owned by the same family and operated in the common interest, though the evidence discloses minor differences in stock ownership (Part 1, BTA Dec. 1327). . . . The Board of Tax Appeals sustains a deficiency determination in the case of a refund made in error (Part 1, BTA Dec. 1334). . . . Deductions for exhaustion, wear and tear of a Chicago hotel constructed on ground leased for a period of 99 years is the subject of Part 1, BTA Dec. 1337. . . . A deduction for inventory loss under the 1918 Act is denied in the absence of evidence that the taxpayer has sustained a substantial loss resulting from a material re-

duction in the value of the inventory as taken at the close of 1918 (Part 1, BTA Dec. 1343). . . . Further recognition of the availability of the net loss deduction to a new corporation is found in Part 1, BTA Dec. 1361. . . . The running of the statute of limitations on an assessment founded on a failure to file separate returns, a consolidated return showing the full facts having been made, is responsible for Part 1, BTA Dec. 1362. . . . Forfeited payments on stock subscriptions are not income to the corporation (Part 1, BTA Dec. 1365). . . . Liquidating dividends may be offset by the amount the stockholder is subsequently required to refund for the payment of the corporation's taxes (Part 1, BTA Dec. 1370). . . . Gain or loss on the sale of a royalty right in an oil lease is based on "cost," not on discovery value (Part 1, BTA Dec. 1371). . . . The determination of gain or loss by reason of the non-exercise of "puts," or the sale of stock "put," is ruled on (Bull. V ('26)-11, page 1). . . . Under the 1918 Act a depletion allowance based on discovery is not to exceed the market value of the product from the property discovered (Bull. V ('26)-11, page 11).

The computation of the estate and gift taxes under the Revenue Act of 1924, as amended by the Revenue Act of 1926, is set forth in two Treasury Decisions (Part 2, Estate and Gift Taxes, ¶634 and ¶626). . . . Although an "interest" in realty transferred in trust vests in the grantee-remainderman at the time of such transfer (Pennsylvania), if, as here, there is a reservation of a life estate in the grantor including physical possession and enjoyment of the trust realty, the trust created is held (Third Circuit Court of Appeals) to

have been "intended to take effect in possession or enjoyment at or after death" (Part 2, Estate and Gift Taxes, ¶631). . . . The 1917 excess profits tax regulation prescribing the method of computing tax for a period of less than 12 months is amended (Part 2, Excess Profits Tax, ¶2595). . . . The fact that the Commissioner's adjustment of excess profits taxes under the provisions of Section 328 of the 1918 Act did not produce any large measure of relief is not to be taken as evidence that the Commissioner used improper comparatives, but on the other hand as showing that the taxpayer's competitors were producing gains and profits and were subject to excess profits taxes in amounts comparable to the apparent liability of the complaining taxpayer (Part 2, Excess Profits Tax, BTA Dec. 1330). . . . In an appeal involving the reduction of invested capital by the amount of the income and profits taxes for the preceding year prorated from the date when each installment became payable, the Board cites Section 1207 of the Revenue Act of 1926 as superseding its decision in the Guarantee Construction Company case (Part 2, Excess Profits Tax, BTA Dec. 1356). . . . Profits credited to personal accounts of shareholders of a close corporation, no dividend covering the amount so credited having been formally declared, remain the undistributed profits of the corporation for invested capital purposes and do not acquire the status of borrowed capital (District Court, Kansas) (Part 2, Excess Profits Tax, ¶2597). . . . The District Court (Ohio) decides for the taxpayer in a "nominal capital" case under the 1917 Act (Part 2, Excess Profits Tax, ¶2599). . . .

A consolidated corporation (New York) determines its invested capital by the actual cash value of the assets, tangible and intangible, at the time of the consolidation (Part 2, Excess Profits Tax, BTA Dec. 1369). . . . The United States Supreme Court reverses the judg-

ment in the Chile Copper Company case, finding that the holding company which finances its subsidiaries is subject to capital stock tax (Part 2, Capital Stock Tax, ¶13251). . . . The repeal of the stamp tax on powers of attorney is described (Bull. V ('26), 13—page 35).

## Notes

During the months of January, February and March of 1926 the amount of corporation franchise taxes and fees paid to the Secretary of State of Delaware was \$511,793.91. Of this amount \$332,756.46 was paid through The Corporation Trust Company, by corporations represented by it.

The Court of Appeals of the State of New York handed down its decision in the Moneyed Capital tax case, one of the most important New York cases of the year, at 2 o'clock, March 30. The decision covered 28 pages. The full text was printed, in Service form, and on its way to all subscribers to The Corporation Trust Company's New York Tax Service before the close of business the next day, March 31.

A Delaware corporation has just been formed for Mandel Brothers, one of Chicago's pioneer department

stores. Papers were filed and the company is to be represented in Delaware by The Corporation Trust Company.

On April 7 counsel for the Oswego River Power Corporation had a certificate of increase of the number of shares to be filed without delay at Albany. The Corporation Trust Company despatched a special messenger with the papers from New York, reaching our Albany office at 4.15 p.m. Our Albany Agent had the certificate filed and tax paid, one certified copy with tax receipts on its way to the County Clerk of Oswego county and another copy on its way to the company's counsel, by 5 o'clock.

439 corporations were organized in Delaware from March 20 to April 20, as against 359 reported in last month's Journal for the preceding 30-day period.

## Some Important Matters for May and June

This calendar does not purport to cover general taxes or reports to other than state officials, or those we have been officially advised are not required to be filed. *The State Report and Tax Service* maintained by *The Corporation Trust Company System* sends timely notice to attorneys for subscribing corporations of report and tax matters requiring attention from time to time, furnishing information regarding forms, practices and rulings.

**ARIZONA**—Report to Corporation Commission and Registration Fee due during June. Domestic and Foreign Corporations.

**CALIFORNIA**—Corporation Franchise Tax due on first Monday in July—Domestic and Foreign Corporations.



DELAWARE—Annual Franchise Tax due between third Tuesday in March and July 1—Domestic Corporations.

DOMINION OF CANADA—Annual Summary due between April 1 and June 1—Domestic companies having capital stock.

ILLINOIS—Annual License Fee or Franchise Tax due on or before July 1 but may be paid up to July 31 without penalty—Domestic and Foreign Corporations.

INDIANA—Corporation Report due between June 1 and July 31—Domestic Corporations.

IOWA—Annual Report due between the first day of July and the first day of August—Domestic and Foreign Corporations.

Additional statement due at the time of making the Annual Report in July—Foreign Corporations.

MAINE—Annual Tax Return due on or before June 1—Domestic Corporations.

MONTANA—Annual Report due in April or May—Foreign Corporations.  
—Annual License Tax based on Net Income due between June 1 and June 15—Domestic and Foreign Corporations.

NEBRASKA—Annual Report and Fee due on or before July 1—Domestic Corporations.

NEVADA—Annual List of Officers due on or before July 1—Domestic and Foreign Corporations.

NEW JERSEY—Annual Tax Return due on or before first Tuesday of May—Domestic Corporations.

NEW YORK—Annual Return of Net Income on or before July 1—Domestic and Foreign Business Corporations.

NORTH CAROLINA—Capital Stock Report to determine amount of franchise tax due between May 1 and July 1—Domestic and Foreign Corporations.

OREGON—Annual Statement due during June—Domestic and Foreign Corporations.

RHODE ISLAND—Corporate Excess Tax due on or before first day of July—Domestic and Foreign Corporations.

TENNESSEE—Annual Report and Franchise Tax due on or before July 1—Domestic and Foreign Corporations.

UNITED STATES—Second Installment Income Tax due June 15—Domestic Corporations and Foreign Corporations having an office or place of business in the United States.

WASHINGTON—License Tax due on or before July 1—Domestic and Foreign Corporations.

WEST VIRGINIA—Tax statements due on or before July 1—Domestic Corporations.

Annual License Tax due on or before July 1—Domestic and Foreign Corporations.

Fee to State Auditor as Attorney in Fact due on or before June 30—Foreign and Non-Resident Domestic Corporations.

WYOMING—Annual sworn statement and license tax due on or before July 1—Domestic and Foreign Corporations.

## The Corporation Trust Company's Supplementary Literature

*In connection with the various departments of its business, The Corporation Trust Company publishes the following supplementary pamphlets and forms, any of which it is always glad to send without charge to readers of The Journal:*

**What Constitutes Doing Business.** A 128-page pamphlet containing brief digests of 301 decisions selected from those in the various states as indicating what is construed in each state as "doing business" by a foreign corporation in the sense of requiring qualification.

**Safeguarding Stock Transfers.** Dealing with the many pitfalls in transferring stock on a corporation's books, and the liability of the company's officers for making unauthorized transfers.

**Delaware Corporations.**—This handy pamphlet presents in most convenient form for quick reference a digest of the Delaware corporation law, its advantages for business corporations, the attractive provisions for non-par value stock, both common and preferred, and a brief summary of the statutory requirements, procedure and costs of incorporation.

**Shares Without Par Value.** Explains some of the advantages of such shares and presents brief synopses of the statutory provisions for issue in the 39 states in which they are authorized.

**Paying Too Much in Taxes.** Shows how taxpayers may unwittingly make themselves liable for more income tax than is necessary by not observing the proper procedure at the time transactions resulting in gain or loss are being negotiated.

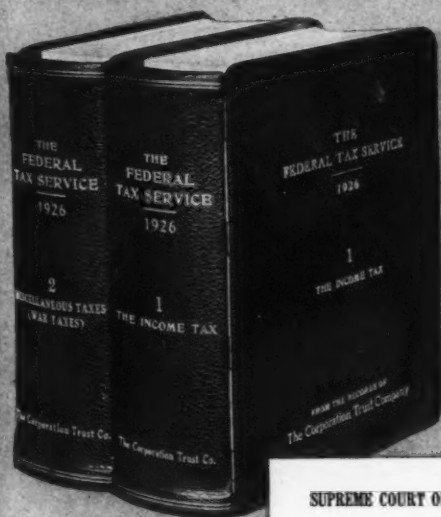
**When Doing Business Is Illegal.** A brief discussion, illustrated by many actual examples taken from the court records of various states, of the difference between "Interstate" and "Intrastate" business, and the risks assumed by a corporation in transacting the latter class of business in a state other than that of its incorporation unless license is first obtained.

**Revenue Act of 1926.** A reprint of the law as furnished to subscribers to The Federal Tax Service of this Company.

**Certificate of Incorporation of Interstate Power Company.** An unusually interesting example of how both common and preferred stock without par value may be handled under the Delaware law. Reprinted by special permission of counsel.

**Transfer Requirement Charts.** A convenient card on which the principal requirements exacted by leading transfer agents for various classes of stock transfers are arranged in groups according to the type of name in which the stock stands. A useful guide for corporation officials charged with the heavy responsibility of making transfers on the company's books.

**Lawyers' Preliminary Work Sheets.** Large sheets for the double purpose of reminding counsel of all the various points on which he may need information from his client before starting the preparation of incorporation papers, and furnishing a convenient medium on which to record such information in rough but systematic form for later reference and check up of papers. Furnished in pads of six sheets.



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# SUPREME COURT OF THE UNITED STATES.

No. 245—October Term, 1925.

Julius F. Sulistansky, as Collector of  
Internal Revenue for the First Dis-  
trict of Illinois, Petitioner.

vs.  
First Trust and Savings Bank, Trustee  
under the Last Will and Testament  
of Otto Young, deceased, Respondent.

Certiorari to the Circuit  
Court of Appeals for  
the Seventh Circuit.

[February 27, 1926.]

Mr. Chief Justice Taft delivered the opinion of the Court.

The question presented for decision is whether under the Income  
Tax Law of 1913, income held at 'accumulation' by a Trustee for  
the benefit of unborn and unascertained persons is taxable  
under the provisions of § 101, and under the provisions of § 102, and the

acts are not a part of the State  
of the U. S. 204, 207; U. S. 151, 152.  
The Treasury Department did not attempt, for two years, to  
tax on income of this character. This was in accord with  
the opinion of Deputy Commissioner of Internal Revenue Spear,  
dated February 9, 1916, published by the Department (Corporation  
Trust Co. Income Tax Service 1916, p. 436). He held that  
"the income tax can be levied only on such income as is payable  
to some natural or artificial person subject to the provisions of  
the law."

Subsequently this ruling was changed and the Commissioner of  
Internal Revenue held that "when the beneficiary is not an individual  
and the income of the estate is retained by the fiduciary, such in-  
come will be taxable to the estate as far as individuals, and the  
fiduciary will pay the tax both normal and additional."

This seems to us to graft something on the statute that is not  
there. It is an amendment and not a construction and such an  
amendment was made in subsequent income tax laws as we shall

## Delaware Corporations

**T**HE Corporation Trust Company maintains in its Wilmington Office the largest, best equipped organization in Delaware for the assistance of attorneys in all corporation matters.

When speed is desired in procuring the incorporation of a Delaware corporation this company effects complete organization the same day papers are received in Wilmington—and notifies counsel by wire. In the same manner this company ascertains the availability of a proposed corporate name and advises counsel by wire within a few hours.

Complete information as to costs or procedure, copies of precedents and forms, or any other information desired regarding incorporation in Delaware, will gladly be furnished without cost upon request to any office of this company.

### **THE CORPORATION TRUST COMPANY**

120 Broadway, New York

*Affiliated with*

### **The Corporation Trust Company System**

15 Exchange Place, Jersey City

Organized 1892

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